

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COLORADO CALLCOMM)	File No. 0001066599
)	
For Application to Modify the License for)	
Private Land Mobile Radio Station WNXS842)	
Denver, Colorado)	

ORDER

Adopted: November 19, 2003**Released: November 20, 2003**

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On November 29, 2002, ACS Investments, Inc. (ACSI) filed a Petition to Deny the above-captioned application.¹ Colorado CallComm (CallComm) filed the application seeking authority to convert its license for Station WNXS842 from private land mobile radio service to commercial specialized mobile radio (SMR) service.² As discussed below, we deny the Petition to Deny.

II. BACKGROUND

2. ACSI is a co-channel licensee on the 800 MHz SMR channel pair assigned under CallComm's license for Station WNXS842.³ On October 1, 2002, the Public Safety and Private Wireless Division (PSPWD) consented to assignment of the Station from Brookfield Development, Inc. (Brookfield) to CallComm.⁴ On November 8, 2002, several days before filing its Petition to Deny, ACSI sought reconsideration of PSPWD's decision.⁵ In its Petition to Deny, ACSI incorporates by reference the facts and arguments presented in its Petition for Reconsideration. On May 21, 2003, PSPWD denied

¹ Petition to Deny, filed by ACS Investments, Inc. (Nov. 29, 2002).

² Specifically, the application seeks authority to convert service from conventional business radio (GB) to conventional SMR (GX). We note that on February 4, 2003, the Commission consented to assignment of the license for Station WNXS842 from CallComm to CU Radio Enterprises, Inc. (File No. 0001173040). Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1417 (Feb. 12, 2003).

³ CallComm's license for Station WNXS842 is currently authorized to provide Conventional Business Radio Pool service on frequency 853.0375 MHz. ACSI operates Conventional SMR service under the license for Station WPBZ432 on the same frequency.

⁴ Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1309 (Oct. 9, 2002) (File No. 0001030441).

⁵ Petition for Reconsideration, filed by ACS Investments, Inc. (Nov. 8, 2002).

ACSI's Petition for Reconsideration.⁶

III. DISCUSSION

3. We deny ACSI's Petition to Deny because ACSI bases its arguments on insufficient evidence and unsubstantiated claims that have already been rejected by PSPWD in response to ACSI's Petition for Reconsideration. In its Petition to Deny, ACSI alleges that CallComm's application to modify its license would be contrary to the public interest for the reasons stated in its Petition for Reconsideration.⁷ PSPWD rejected these arguments when it denied ACSI's Petition for Reconsideration, finding that the evidence presented did not support the allegations.⁸ In this case, ACSI has presented no new arguments that would persuade us to reach a different result,⁹ and we, therefore, deny ACSI's Petition to Deny.

IV. ORDERING CLAUSE

4. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309, and Sections 0.331 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.939, the Petition to Deny filed by ACS Investments, Inc. on November 29, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy & Rules Branch,
Commercial Wireless Division
Wireless Telecommunications Commission

⁶ In the Matter of Brookfield Development, Inc. and Colorado Callcomm, *Order*, DA 03-1756 (PSPWD rel. May 23, 2003) (PSPWD Order).

⁷ In its Petition for Reconsideration, ACSI alleged that renewal of the license was invalid because, according to ACSI, the license had cancelled automatically when Brookfield permanently discontinued operations as defined under Commission rules. ACSI also claimed that CallComm operated the station on a commercial basis prior to obtaining authority to do so; CallComm transferred control of the station prior to receiving Commission approval to do so; and station operations exceeded power limits and used non-authorized emission types in violation of the Commission's technical rules.

⁸ PSPWD Order at ¶¶ 4-9.

⁹ ACSI offers one additional allegation in its Petition to Deny that it did not include in its Petition for Reconsideration that was denied by PSPWD. ACSI, in affidavits attached to the Petition to Deny, claims that CallComm's owner, Mr. John Gazzo, harassed ACSI's principal, Michael Tony Westall, and his spouse, Denise Westall, during a telephone conversation between Mr. and Mrs. Westall on November 22, 2002. Petition to Deny at 2-3. We find that these allegations do not provide a basis for granting ACSI's Petition to Deny. We may, however, refer this complaint to the Enforcement Bureau for further consideration.